

12.735 FEDERAL AND STATE FORFEITURES

Reference:

21 U.S.C. 853 - Federal Criminal Forfeitures
21 U.S.C. 881 - Federal Civil Forfeitures
Ohio Revised Code 2901.01(A)(13) - Definitions
Ohio Revised Code 2925.42 - Ohio Forfeiture Law
Ohio Revised Code 2925.43 - Ohio Forfeiture Law
Procedure 12.715 - Property and Evidence:
Accountability, Processing,
Storage and Release

Purpose:

To ensure the fair and impartial enforcement of search and seizure laws while protecting the individual property rights of citizens.

To provide for uniform and efficient processing of forfeiture applications through the Federal Bureau of Investigation (FBI) and the Hamilton County Prosecutor's Office of seized property.

Policy:

Division personnel will not seize currency from any citizen absent probable cause to believe such currency is contraband, as defined in the Ohio Revised Code Section 2901.01(A)(13), or evidence of a crime.

Information:

Both federal law and the Ohio Revised Code (ORC) provide for forfeiture, to the Police Division, of all property used in and the proceeds gained from the commission of a felony drug offense.

In addition, the ORC provides for forfeiture, to the Police Division, of personal property and money considered contraband because of its use in any offense or a conspiracy to commit any offense.

Motor vehicles are only forfeitable if used in a felony offense. However, motor vehicles can be ordered forfeited, by Municipal Court, by an agreed order of forfeiture in connection with a plea arrangement.

Procedure:**A. Initiation of Forfeiture Proceedings:**

1. Officers coming into contact with contraband, money, or a vehicle believed to be subject to forfeiture will seize those items and complete a Form DIS-94, Forfeiture Application.
 - a. The officer must believe sufficient probable cause exists to believe the item has been obtained through or used in the commission of a felony offense.
 - b. If the contraband, money, or vehicle is needed as evidence for court, process as directed in this procedure and Procedure 12.715, Property and Evidence: Accountability, Processing, Storage, and Release.
 - 1) It is the exception, rather than the rule, to hold a vehicle as evidence.
 - 2) In most cases involving large amounts of currency, the Prosecutor's Office requests the currency be held as evidence.
 - c. Clearly mark the words "Seized Asset - Forfeiture Case" on all property tags and receipts of property seized for forfeiture proceedings.
 - d. Attach a copy of the approved Form DIS-94 to the property receipt.
2. The investigating officer will submit a Form DIS-94 along with copies of the following documents, if applicable, to the Asset Forfeiture Section (AFS) prior to the completion of the tour of duty.
 - a. Arrest and Investigation Report. (Form 527) (include zip codes for residence address and place of arrest)
 - b. Vice Activity Report (Form 526).
 - c. Evidence Submission Sheet.
 - d. Search warrants and returns.

- e. Any complaints signed (after notarization).
- f. A complete list of all property seized which might be subject to forfeiture proceedings.
- g. If a vehicle is involved, a Form 369 with computer printout showing registration information on vehicle.
- h. A concise case summary showing:
 - 1) Probable cause for arrest.
 - 2) Relationship of seized property to the felony drug offense or involved offense.
 - 3) Present location of the property (e.g., Court Property Unit, Impound Unit).
 - 4) If the Cincinnati Police Division is the only agency involved in the seizure.
 - 5) If there is an additional agency involved in the seizure, the identity of the agency and explaining their participation in the case.

3. Seizure of Currency from Juveniles:

- a. Money seized from juveniles can be considered part of the normal proceedings if accompanied by a petition.
 - 1) This applies to individuals charged with drug related offenses under ORC Section 2925 and in which money was seized regardless of the amount.
 - a) This does not bypass the need to complete the Forfeiture Application or notify the Asset Forfeiture Squad of the seizure.
 - 2) Complete the Juvenile Complaint with the appropriate information added.

4. Seizure of Motor Vehicles:

a. If a vehicle is involved, complete a Towing Report (Form 369) and tow to the Impound Unit. Note in remarks "**Hold For Forfeiture, Do Not Release.**" Also note the owner notified of the seizure, the time, date, method of notification, and the officer who made the notification.

1) The investigating officer must notify the owner within 72 hours of the seizure. Notification may be orally (in person), by telephone, or by certified mail (return receipt requested) to the owner's last known address.

2) If the investigating officer cannot actually contact the owner, reasonable good faith efforts to do so constitute fulfillment of the notice requirement (ORC Section 2933.43(A)(2)). Record all unsuccessful efforts in the case jacket.

b. Motor Vehicles Not in Possession of the Owner at the Time of Seizure:

1) Return motor vehicles and contents to the owner within 72 hours if not in the possession of the owner at the time of seizure unless:

a) The owner is charged with a felony offense or administrative violation that includes the use of the vehicle as an element of the offense (i.e., Permitting Drug Abuse, ORC Section 2925.13).

b) The owner is charged with a felony offense or administrative violation in the actual commission of which the motor vehicle was used.

- 1] If one of the above applies, the motor vehicle may be retained until the disposition of the criminal or administrative charge.
 - 2] If one of the above does not apply and the investigating officer will need more than 72 hours to complete the investigation, petition the Court of Common Pleas for an order extending this 72 hour period.
- 2) Request for Court Order to Extend the 72 Hour Period (ORC Section 2933.43):

NOTE: Use of this section is the exception rather than the rule. The actual number of times this court order is requested should be minimal. The preferred practice is to complete the investigation and return the vehicle to the owner within the 72 hour period.

- a) Officers will exercise sound discretion when applying for a court order to extend the 72 hour period. This application procedure is complicated and time consuming. Avoid it if at all possible.
- 3) Contact AFS on the first available business day after the seizure and provide the following information:
- a) A complete description of the vehicle, including make, model, year, color, and VIN number.
 - b) The name and last known address of the owner.
 - c) A statement of why additional time is needed for investigation, inspection, or the gathering of evidence.

- d) Information concerning the notice given to the owner.
- 4) AFS will contact the Prosecutor's Office, provide them with the above information, and request the Prosecutor's Office petition the court for an order extending the 72 hour period.
 - a) It may be necessary for the investigating officer to appear at the petition hearing to explain why it is necessary to hold the vehicle longer than 72 hours.
 - 1] A Central Vice Control Section supervisor will notify the officer if the officer is required to attend the petition hearing.
- 5) The court must hold a hearing no later than the next court day and notify the owner of the hearing.
 - a) Investigating officers will notify the owner of this hearing.
 - 1] Make notification to the owner's last known address as shown on the Form 527, Form 369, etc.
 - 2] Investigating officers will use the Notice of Hearing (Form 273) to make notification.
 - a) Complete the Proof of Service portion.
 - 3] Mail a copy of the notice to AFS for tracking purposes. Return the original to the prosecutor handling the case. The prosecutor will then file the Proof of Service with the court.

- 6) If the petition is denied by the judge, return the motor vehicle and contents to the owner.
 - a) The Police Division may require proof of ownership or legal possession of the contents of the motor vehicle. Also required is an Affidavit (Form 272) from the owner stating lack of knowledge concerning the motor vehicle's use in illegal activities or no expressed or implied consent was given for the use of the motor vehicle in intended illegal activity.
- 7) The Impound Unit, district, or unit which has possession of the vehicle will:
 - a) Execute the Form 272.
 - 1] If a notary is not on duty at the Impound Unit, they will request a District Five supervisor respond to the Impound Unit to notarize the affidavit.
 - b) Release the vehicle to the owner.
 - c) File the Form 272 with the Form 369 and mail a copy to AFS for tracking purposes.

B. AFS Responsibilities:

1. Asset Forfeiture personnel will be recalled on all seizures of currency or property exceeding \$10,000 in value. Seizures involving Regional Narcotics Unit personnel are exempt for the recall provision.
2. Determine whether the property is subject to forfeiture based upon the following minimum guidelines and the facts of the particular case:
 - a. U.S. Currency - \$200.00.
 - b. Vehicles - \$1,000.00.

3. Determine which agency (FBI or Hamilton County Prosecutor's Office) will process the forfeiture and forward the necessary information to them.
 4. Secure a certified copy of auto titles at the Auto Title Department, County Administration Building, 1001 Main Street, Cincinnati, Ohio, 45202.
 5. Act as liaison between the division and the processing agency.
 6. Track all cases to provide the division with information on the status of forfeiture cases.
- C. Distribution of Property Forfeited to the Police Division:
1. The FBI or the Hamilton County Prosecutor's Office will notify AFS when the Police Division will receive forfeited property. AFS will:
 - a. Respond to the Court Property Unit and provide them with a copy of the court order.
 - b. Sign a Form 272 for property received and transfer/deposit cash with the City Treasurer.
 - c. Forward appropriate documentation to the Fiscal and Budget Section with the amount of deposit.
 - d. Notify Facilities/Equipment Management Section if the forfeiture involves motor vehicles or other property.
 - 1) Facilities/Equipment Management Section will assign motor vehicles or other property to various units throughout the Police Division.
 2. If the Police Chief chooses to sell forfeited property rather than keep it for use by the division, Facilities/Equipment Management Section will:
 - a. Arrange for the sale of the property.

- b. Forward the proceeds of the sale to the Fiscal and Budget Section for deposit in the forfeiture account.
- c. Notify AFS which property is sold and of the proceeds received from the sale.

D. Disposition of Money Seized for Forfeiture:

- 1. If, after review of the Form DIS-94 by AFS and/or the appropriate prosecutor, a decision is made to adopt the case for forfeiture, the AFS will assume responsibility for release of the money.
- 2. If, after review of the Form DIS-94 by AFS and/or the appropriate prosecutor, no connection is found between the money and any illegal activity, the AFS will notify the seizing officer no forfeiture action will be initiated against the seized money.
 - a. If the seized money is not needed as evidence in any other civil or criminal proceeding, the seizing officer will contact the Court Property Unit and authorize the release of the money to the defendant or his authorized representative.
 - b. The seizing officer will then notify the defendant to claim the money at the Court Property Unit.